The respondent claimed from the appellant compensation for injury suffered in the course of his employment. The claim was heard by the Commissioner of Workmen's Compensation who made the following order:

"I find Soon Peng Siong, Managing Proprietor of Chop Siong Huat of 73 Kallang Road to be the Principal contractor to Ang Geok Thye alias Ang Geok Ho, employer of injured workman, Sin Yuh Miaw. In accordance with section 19 of the Workmen's Compensation Ordinance I formally order Soon Peng Siong on behalf of Chop Siong Huat, 73 Kallang Road to pay to me the said $2,854.20 within two weeks of the service of this claim to him."

The claim was then referred to the Workmen's Compensation Arbitrator in accordance with the provisions of section 30 of the Workmen's Compensation Ordinance. The claim was heard by the Arbitrator who made the following order:

"Having duly considered the matter submitted to me I do hereby order the 1st respondent Soon Peng Siong of Chop Siong Huat to pay to the Commissioner for Workmen"s Compensation on behalf of the applicant Sin Yuh Miaw the sum of $2,854.20.

In accordance with the provisions of section 19(2) (Cap. 157) the 1st respondent Soon Peng Siong of Chop Siong Huat, 73 Kallang Road, Singapore is entitled to be indemnified by the 2nd respondent Ang Geok Thye of 334 Pasir Ris, Singapore."

The Arbitrator found that "the dismantling is a condition precedent to the purchase and . . . that the said agreement referred to was an 'agreement to dismantle and purchase' and not an 'agreement of sale'."

This appeal raises a question under section 19(1) of the Workmen's Compensation Ordinance (Cap. 157). It says as far as it is relevant to this case:

"Where any person (in this section referred to as 'the principal') in the course of or for the purpose of his trade or business contracts with any other person otherwise than as a tributer (in this section referred to as 'the contractor') for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him."

In substance section 19(1) corresponds to section 6(1) of the English Workmen's Compensation Act, 1925, though there are a few differences, which, however, are not material as far as this appeal is concerned.

The question that falls to be decided by this Court is this: Was the work of dismantling the vessel work undertaken "in the course of or for the purposes of" the trade or business of the appellant ?

The appellant submits that the work in question was not undertaken by him and it is not work in the course of or for the purpose of his trade or business. He says that his business is that of a scrap dealer and not a ship-breaker and although it may be necessary for him to break up what he has bought he always entrusts such work to others. He further says that the agreement of the 12th September, 1958, was an agreement by him to buy scrap of 4 of the 5 hatches of the ship on certain conditions and one of which was that he must break up the ship as it was necessary to weigh the metal.

In order that section 19(1) shall apply there must first be work undertaken by the principal; secondly, the work must be in the course of, or for the purpose of his trade or business; and, thirdly, he must contract with another person for the execution of the whole, or some part, of the work. Whether the work is undertaken by the principal is in each case a question of fact. (*Hockley* v. *West London Timber and Joinery Company*)[1].

Now, the appellant in his evidence before the Arbitrator says, as regards his business: "I buy boats and break them up for scrap . . . . My business is to buy and sell scrap. I have never before undertaken any work as a principal contractor. I give out contract to others." I have not been able to entertain any doubt upon the evidence given in this case that it was part of the appellant's business to undertake to break up ships, without which he could not buy the scrap and carry on his business of a scrap dealer and it is immaterial that he found it more convenient in practice to sub-contract for that part of the work, which he had contracted to do. The appellant undoubtedly entered into a contract to break up the whole ship, as was found by the Arbitrator, and it appears to me clear that the appellant undertook the work.

It follows therefore that this appeal must be dismissed.

Appeal dismissed.

Solicitors: *Wee Swee Teow & Co.; Director of Legal Aid.*

SEMANTAN ESTATE (1952) LTD. v. COLLECTOR OF LAND REVENUE

[O. C. J. (Ong J.) September 21, 1960]

[K. L. — Civil Application No. 2 of 1959]

Land Acquisition Enactment (Cap. 140), ss.11 (1)(c) and 22 — Where Collector in making award omitted to carry out statutory duty — Whether effect of such omission invalidates the award — Jurisdiction of Court to hear the reference.

A reference to Court in the matter of land acquisition is governed by the Land Acquisition Enactment (Cap. 140), and its jurisdiction to entertain the reference is a jurisdiction resting solely on that statute. The condition prescribed by section 22 must be complied with before the Collector can make the reference and the Court has jurisdiction to act on it.

Cases referred to:—

(1) *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan* (1855) 6 Moo. I.A. 134, 155.

(2) *In re Land Acquisition Act, Government* v. *Nanu Kothare & Ors.* I.L.R. 30 Bom. 275, 285.

REFERENCE in Land Acquisition.

R. H. V. Rintoul and *Yong Pung-How* for the appellant.

R. Ramani and *Ng Ek Teong* for the respondent.

Ong J.: Mr. Ramani, Counsel for the Collector of Land Revenue, i.e., the Government, as respondent, has raised a preliminary objection to my proceeding to hear this reference, on the ground that the Collector, in making his award, had omitted to carry out his statutory duty and to make an apportionment of compensation in favour of a known interested party in accordance with paragraph (c) of section 11(1) of the Land Acquisition Enactment. He submits that the effect of such omission is to invalidate that award, and that, in the absence of a valid award, this Court has no jurisdiction to act on a reference.

Mr. Rintoul, for the applicant, contends first, that, so far as the parties to this reference are concerned — and having regard to the provisions of section 27 of the Enactment — the requisites for a valid award under section 11 had been complied with; secondly, that the omission was only an irregularity that did not vitiate the award; thirdly, that the Collector cannot be heard to ask the Court to go behind his award when he relies on his own default; and fourthly, that the parties, by their respective legal advisers, had agreed to waive all irregularities and ask for a reference.

I do not propose to deal with all the arguments which have been addressed to me, nor discuss the various authorities which learned Counsel have cited. With all respect I think I can come to my decision in accordance with certain well-known principles.

In the first place, I refer to the fundamental principle enunciated in *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan Wulled Meer Subroodeen Khan Bahadoor*[1] by the Judicial Committee of the Privy Council:

> "Wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise."'

A reference to Court in the matter of land acquisition is governed by the Land Acquisition Enactment (Cap. 140), and its jurisdiction to entertain the reference is a jurisdiction resting solely on that statute. The conditions prescribed by section 22 must be complied with before the Collector can make the reference and the Court have jurisdiction to act on it. As Chandavarkar J. said in *In re Land Acquisition Act, Government* v. *Nanu Kothare & Ors.*[2]

> "These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the Court can have jurisdiction to entertain the reference."

In the next place, a reference to Court postulates a valid award, that is to say, an award properly made in substantial conformity with the relevant provisions of the Enactment, which is section 11.

Mr. Ramani attacks the award on the ground that the Collector's failure to make an apportionment in favour of the option-holders of a 63-acre portion of the land acquired was a fatal defect. It may very well be so, or it may be that the omission was nothing more than an irregularity, as Mr. Rintoul contends. I do not, however, consider it necessary to decide this point because it is quite clear to me that on other grounds I do not have jurisdiction to proceed in the matter.

The Notification under section 4(i) was signed on July 19, 1956 and appeared as notice No. 401 in the Selangor Government Gazette of July 26, 1956. The declaration under section 6(i) was signed on October 20, 1956 and appeared in the Gazette as notice No. 577 on October 25, 1956. An award was made, under section 11, by the Collector on November 27, 1956. The applicants did not accept this award and on June 10, 1957 made a written application to the Collector stating their objections and requesting a reference to Court under section 22.

Subsequently a notice of withdrawal from acquisition under section 49 was given by Government on January 22, 1958 in respect of 22 Acres 1 Rood 24 Poles; but by Notification No. 117 of March 6, 1958 a further acquisition was made of 60 Acres 2 Roods 27.5 Poles, with the result that the area finally acquired was 263.272 acres.

On May 3, 1958 the Collector wrote to the applicant's solicitors as follows:

> "Cub: Diplomatic Enclave — C.T. 12530
> Lot 4647 — Mukim of Batu.
> Ref: YPH/6161/D 6355 of 17.5.1957.
>
> I have the honour to refer to your abovementioned letter and to inform you that when preparing Reference papers for this case certain irregularities came to light and I am advised that the Award made by the Collector on 27.11.56 was invalid and that the enquiry as a whole was a nullity. I am further advised that I should now proceed on the basis that the area marked "A" on the attached plan has been validly gazetted and that the acquisition proceedings should continue from the stage at which the Mentri Besar issued a direction under Section 7 of the Land Acquisition Enactment.
>
> 2. You have received a notice of withdrawal under Section 49 of the Enactment in respect of area "B". Declarations under Section 6 of the Enactment in respect of Areas "C" and "D" were published in the Selangor Gazette vide Notification 117 dated 6.3.58.
>
> 3. Attached to this letter are Copies of Notices under section 9(i), 9(iii), 9(iv) and 10(i) of the Enactment which are being served on the Registered Proprietor. Both enquiries have been fixed for the same day (the first at 9.30 a.m. and second at 2.30 p.m.) since the lands affected are adjacent to one another. If you would prefer the enquiries to be held on separate days, it will be appreciated if you let me know and I shall be glad to adjourn the second enquiry to some other date."

On January 5, 1959 the State Legal Adviser wrote to the applicant's solicitors the following letter:

> "Diplomatic Enclave
> CT. No. 12530 Lot 4647 — Mukim of Batu.
>
> I have the honour to refer to your letter dated 1st August, 1958, on the above subject and in reply to inform

you that I confirm the arrangements set out in your abovesaid letter namely:—

(a) The whole area now taken by Government was acquired by virtue of Notification No. 401 published in the Selangor Government Gazette on 26th July 1956.

(b) That areas "A", "C" and "D" shown in the plan referred to in letter No. 16 in DOKL. Conf. No. 52/57 dated 6th May, 1958 were acquired under G.N. 401.

(c) That no proceedings were ever taken in respect of area "B".

(d) That the award made by the Collector of Land Revenue was at the rate of $5,282 per acre and that your client's claim in respect of the area was at the rate of $13,000 per acre.

(e) That your client may make an additional claim under Section 29(i)(c) and/or (i)(d) of the Enactment in respect of severance and/or injurious affection.

(f) That compensation at the rate of $5,282 per acre had been paid on the 19th day of December, 1956 in respect of 250 acres.

(g) That the total area of "A", "C" and "D" is 263.272 acres.

(h) That your client will be paid further compensation at the rate of $5,282 per acre on the additional 13.272 acres plus 6% interest from the 3rd December, 56.

(i) That the Second acquisition proceedings would be withdrawn by Government and treated by both sides as never having occurred.

2. I have spoken to the Attorney-General and he agreed with the above arrangement."

From the record prepared by the Collector and, in particular, the two letters quoted above, it is clear that the Collector, upon taking legal advice, realised that he could not proceed to make a reference to Court on the basis of the award of November 27, 1956 which, according to such advice, was invalid. Thereafter it was sought to solve the problem by agreement to the effect that the whole area finally acquired by Government was to be deemed to have been acquired by virtue of the Notification No. 401 of July 26, 1956, and that the award by the Collector in respect of such area was at the rate of $5,282 per acre, as against a claim of $13,000 per acre by the applicants.

The additional acquisition under Notification 117 of March 6, 1958 cannot possibly be included in the award of November 27, 1956, or in the reference, as has been done. No award has ever been made in respect of this additional area. The only way it could have been included in that award was under the provisions of section 51, which was in the circumstances impossible.

I therefore hold that I have no jurisdiction under the Enactment to entertain the reference because it is not, in fact, a reference based upon the award of November 27, 1956, or any award. The Court has jurisdiction only under section 22. The parties themselves cannot, by an agreement to waive irregularities in procedure and to seek a reference, confer jurisdiction on the Court *dehors* the Enactment. Only Parliament can do so. Since this reference is expressly made under section 22 of the Enactment, there is only one proper course open to me, and I must decline to act.

I am fortified in my decision by the fact that it is in the best interests of all parties, and cannot but effect a considerable saving in time and costs.

The matter has reached this stage entirely by reason of the respondent's fault. The proper steps which should have been taken have not been taken. The remedy lay with him. I do not consider the applicant or his legal adviser are in any way to blame. In all the circumstances the appropriate order as to costs will be that the respondent pay the applicant costs of these proceedings.

I direct that the Assessors be paid $100 each, under section 35, for the loss of their time.

Order accordingly.

Solicitors: *Shook Lin & Bok; Braddell & Ramani.*

GLADYS NUGAWELA v. SOON TECK FINANCE CO.

[A. C. J. (Buttrose J.) November 9, 1960]

[Singapore — Suit No. 14 of 1959]

Damages — Whether seizure of car was illegal and constituted trespass.

Bill of Sale — Loan of money on the security of a car — Purported sale of car followed by hire-purchase agreement — Bills of Sale Ordinance (Cap. 22).

Moneylenders Ordinance — Failure to comply with the provisions of the Ordinance.

The plaintiff in this case borrowed $3,000 from the defendants on 6th August, 1957 and signed the hire-purchase proposal form and the hire-purchase agreement and a receipt for $4,500 purporting to be the full purchase price for the Ford Motor Car paid to her by the defendant Company. The plaintiff signed those documents in blank with no particulars filled in, on the representation made to her by the defendants that they were a mere formality but had to be executed if the loan was to go through. These documents did not represent the real transaction between the parties, their intention being merely to create a security for money. The documents were not registered as required by the Bills of Sale Ordinance, (Cap. 22). The defendants seized the Ford motor car for breach of the conditions of the hiring agreement. Despite requests from the plaintiff, the defendant had refused to return the car and had retained it for a period of some 2½ years.

The defendants claimed by way of set-off a sum of $1,425 being the balance of loan still outstanding and unpaid by the plaintiff. The evidence of the defendants' business manager was that they lent money to a number of their customers in precisely the same way as they did in this case.

Held: (1) the seizure by the defendants of the plaintiff's car was illegal and constituted a trespass and the plaintiff was entitled to damages;

(2) the defendants' claim to set-off must be dismissed, because they were carrying on the business of money lenders at the material time and that this was a moneylending transaction and unenforceable because of its failure to comply with the provisions of the Moneylenders Ordinance.

Cases referred to:—

(1) *Madell* v. *Thomas & Co.* [1891] 1 Q.B. 230 at p. 234.

(2) *Polsky* v. *S. and A. Services* [1951] 1 All E.R. 185 at p. 189.